IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:08CV401-3-MU

DERRICK LAMONT SMITH,)	
Plaintiff,)	
v.)	
OFFICER WETZEL,)	<u> </u>
Defendant.)	
)	

THIS MATTER comes before the Court on the Court's own motion.

According to the record, on August 28, 2008, the Plaintiff filed a civil rights Complaint under 42 U.S.C. § 1983. By that Complaint, the Plaintiff alleges that on April 17, 2007, he was attacked by another inmate. After officers broke up the fight, Plaintiff alleges that he was handcuffed by Defendant and slammed into the wall and then slammed on the floor face first. As a result of the above force by Defendant, Plaintiff claims that his lip was split open and his front tooth was knocked out.

The record shows that on December 8, 2008, Defendant filed an Answer to the Plaintiff's Complaint. By his Answer, Defendant Wetzel denies the material allegations of the Plaintiff's Complaint and asserts certain affirmative defenses, including the defense of qualified immunity and failure to state a claim for relief.

Accordingly, by the instant Order, the Court advises the parties that should they choose to file any dispositive motions, particularly motions for summary judgment, they must do so within

forty-five (45) days of the date of this Order. In the event that the parties choose not to file any

such motions, they should advise the Court of that fact within fourteen (14) days of the date of

this Order. Furthermore, inasmuch as the plaintiff is appearing pro se, the Court specifically

advises him that under the provisions of Rule 56(a) of the Federal Rules of Civil Procedure, he

may "move with or without supporting affidavits for a summary judgment" in his favor upon all

or any portion of his claims.

NOW, THEREFORE, IT IS ORDERED:

1. That the parties have forty-five (45) days from the date of this Order in which to file

any dispositive motions which they may choose to file. However, in the event that either party

chooses not to file a dispositive motion, such party shall advise the Court of that decision within

fourteen (14) days of the date of this Order; and

2. That in the event any such dispositive motion is filed, the opposing party shall have

thirty (30) days from the date of that party's receipt of that motion in which to file a response

with this Court.

SO ORDERED.

Signed: January 28, 2009

Graham C. Mullen

United States District Judge